

## PROPOSED RULES

tions 83.50 and 83.70, as shown in the attached Appendix.

4. The proposed amendments to the rules as set forth in the Appendix are issued pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

5. Pursuant to applicable procedures set forth in section 1.415 of the Commission's rules, interested persons may file comments on or before June 12, 1978, and reply comments on or before June 22, 1978. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

6. In accordance with the provisions of Section 1.419 of the Commission's rules, an original and 5 copies of all statements, briefs or comments filed shall be furnished to the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS  
COMMISSION,  
WILLIAM J. TRICARICO,  
*Secretary.*

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 83.50 [Deleted]

1. Section 83.50 is deleted and designated as [Reserved].

§ 83.70 [Deleted]

2. Section 83.70 is deleted and designated as [Reserved].

[FR Doc. 78-12895 Filed 5-10-78; 8:45 am]

[4910-60]

## DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

Office of Hazardous Materials Operations

[Docket No. HM-144; Notice No. 78-51]

[49 CFR Parts 173 and 179]

SHIPPERS: SPECIFICATION FOR PRESSURE  
TANK CAR TANKS

AGENCY: Materials Transportation Bureau, Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: As a result of a series of recent serious railroad accidents involving certain uninsulated pressure tank cars transporting hazardous

materials, it is proposed to shorten the period of time for the retrofit program specified in this Docket under Amendments numbered 173-108 and 179-19 as follows:

1. Existing specification 112 and 114 tank cars used to transport flammable gases such as propane, vinyl chloride and butane, whose owners have elected to retrofit with jacketed insulation and integral tank head protection (known as the "J" retrofit), would have to be retrofitted over a 3-year period ending on December 31, 1980 (existing deadline: December 31, 1981).

2. Existing specification 112 and 114 tank cars used to transport flammable gases such as propane, vinyl chloride and butane, whose owners have elected to retrofit with a nonjacketed thermal protection system and tank head protection (known as the "T" retrofit) would have to be retrofitted with tank head protection over a 2-year period ending December 31, 1979 (existing deadline: December 31, 1981), and with the nonjacketed thermal protection system over a 3-year period ending on December 31, 1980 (existing deadline: December 31, 1981).

3. Existing specification 112 and 114 tank cars used to transport anhydrous ammonia would be required to be retrofitted with tank head protection over a 2-year period ending on December 31, 1979 (Existing deadline: December 31, 1981).

4. Existing specification 112 and 114 tank cars, regardless of the hazardous lading being transported, would have to be retrofitted with special couplers designed to resist coupler vertical disengagements over a time period ending on December 31, 1978 (existing deadline: June 30, 1979).

ADDRESS: All written comments received in this proceeding are available for examination during regular business hours in room 6500, Transpoint Building, 2100 Second Street SW., Washington, D.C.

DATE: Comments by June 26, 1978.

ADDRESS COMMENTS TO: Dockets Section, Office of Hazardous Materials Operations, Department of Transportation, Washington, D.C. 20590. It is requested that five copies be submitted.

### FOR FURTHER INFORMATION CONTACT:

William F. Black, Office of Safety, Federal Railroad Administration, 202-426-2748.

SUPPLEMENTARY INFORMATION: This Notice is the result of the joint efforts of the Federal Railroad Administration (FRA) and the Materials Transportation Bureau (the Bureau). In accordance with internal DOT procedures, the FRA has developed the substantive proposals of this Notice for review and issuance by the Bureau.

Accordingly, further information concerning substantive provisions of this Notice may be obtained from the above contact.

### BACKGROUND INFORMATION

#### EMERGING NEED FOR EXPEDITED RETROFIT

On September 15, 1977, the Bureau published in the *FEDERAL REGISTER* (42 FR 46306) a final rule concerning specifications for tank cars which included the following timetable:

1. Existing specification 112 and 114 tank cars used to transport flammable gases were to be retrofitted with thermal and tank head protection (such as a "head shield") over a 4-year period ending on December 31, 1981.

2. Existing specification 112 and 114 tank cars used to transport anhydrous ammonia were to be retrofitted with tank head protection (such as a head shield) over a 4-year period ending on December 31, 1981.

3. All specification 112 and 114 tank cars were to be equipped with special couplers designed to resist coupler vertical disengagements. These couplers were to be retrofitted on all cars by July 1, 1979.

The recent major accidents at Pensacola, Fla., on November 9, 1977, at Waverly, Tenn., on February 22, 1978, and at Lewisville, Ark., on March 29, 1978, in combination with an incident of apparent vandalism near Youngstown, Fla., on February 26, 1978, have again focused attention on measures to improve the safety of rail transportation of hazardous materials. In the decade prior to the issuance of these new tank car safety requirements, under Amendments 173-108 and 179-19, 20 persons were killed because of accidental lading release from specification 112 and 114 tank cars. However, in the 6 months following the issuance of the rule, 17 additional persons have been killed.

While it is not possible to prevent the release of dangerous products in all situations, the severity and variety of circumstances relating to the occurrence of recent accidents have pointed out the need to take all feasible steps to protect the public against potential major disasters involving the transportation of flammable gases, anhydrous ammonia, and other hazardous materials. In particular, attention has been directed toward the possibility of accelerating the retrofit timetable for 112 and 114 tank cars.

On March 15, 1978, the Transportation and Commerce Subcommittee of the House Committee on Interstate and Foreign Commerce conducted hearings on railroad safety matters which had come to national attention as a result of the incidents which had occurred at Pensacola, Waverly, and Youngstown. At this hearing, the National Transportation Safety Board (NTSB) stated that it believed that

with a strong sustained effort the special couplers and head shields could be installed on all 112 and 114 tank cars by late in December 1978.

On March 20, 1978, a second hearing was conducted jointly by the Subcommittee on Federal Spending Practices and Open Government and the Subcommittee on Civil Service and General Services of the Senate Committee on Governmental Affairs. At this hearing the NTSB reiterated its position regarding the acceleration of the retrofit schedule. After reviewing the testimony, the subcommittees requested that the FRA consider revising the retrofit schedule.

Further, on April 4-6, 1978, the National Transportation Safety Board conducted a special hearing in which a major focus was the timetable for the retrofit installation of the 112 and 114 tank car safeguards. At the conclusion of that hearing, its Chairman stated that the NTSB had determined that shelf couplers and tank head protective shields should and could be installed on all 112 and 114 tank cars by the end of 1978.

On April 7, 1978, the FRA conducted a special safety inquiry into the retrofit timetable for 112 and 114 uninsulated pressure tank cars. The purpose of this special inquiry was to obtain sufficient information to enable the FRA to determine whether the existing tank car retrofit schedule could be accelerated. The FRA received pertinent manufacturing, maintenance and cost data pertaining to this retrofit program from persons representing the National Transportation Safety Board, railroad carriers, tank car shippers, tank car owners, tank car builders, and coupler manufacturers.

Data submitted in the FRA special safety inquiry, together with other information available to the Department of Transportation, have made it possible to describe more accurately the problems associated with the retrofit process and to fashion a revised retrofit schedule which will improve the safety of specification 112 and 114 tank cars as quickly as possible without creating major economic disruptions. The balance of this Notice will describe the affected tank car pool and retrofit plans which have been made with respect to these cars, summarize the major obstacles to acceleration of the retrofit program, and outline the basic rationale underlying the proposed new schedule.

#### NUMBER OF TANK CARS AND RETROFIT ELECTIONS

As a result of the special safety inquiry and other information received, the following summarizes the current 112 and 114 tank car pool.

The Universal Machine Language Equipment Register (UMLER), which is maintained by the Association of

American Railroads, lists a total of 22,228 DOT and Canadian Transport Commission (CTC) specification 112 and 114 tank cars and 105 individual reporting marks covering these tank cars as of April 11, 1978. Included in this UMLER listing are United States, Canadian and Mexican owned tank cars and car owners (UMLER lists one Mexican owner with fifty tank cars).

Based upon UMLER information and information received from United States tank car owners, the number of DOT specification 112 and 114 tank cars currently does not exceed 20,400 and the number of United States owners is fewer than 100.

Data submitted to the FRA indicate that approximately 3,400 of these 112 and 114 tank cars will be dedicated to anhydrous ammonia service. These tank cars will require "head shields," but not thermal protection, and will be retrofitted to DOT specifications 112S and 114S. Approximately 700 of these tank cars have already been equipped with head shields.

Approximately 2,000 of these tank cars are used to transport vinyl chloride monomer, a flammable compressed gas, on essentially an exclusive basis. Because weight is a critical factor, it is expected that these tank cars will be retrofitted with systems having the least additional weight, e.g., a "spray-on" thermal protection with separate head shields. Consequently, these tank cars will be retrofitted converted to DOT specifications 112T and 114T.

Owners of an additional 2,000 specification 112 and 114 tank cars used in flammable gas service such as for transporting propane appear to have elected to use the "spray-on" thermal protection and separate head shields, thereby retrofit converting to DOT specifications 112T and 114T.

Another group of approximately 500 of these 112 and 114 tank cars will be used exclusively in non-flammable gas and hazardous liquids services. These tank cars will require only a shelf coupler retrofit.

Owners of the remaining 112 and 114 tank cars (approximately 12,500) have elected or are expected to use a jacketed insulation with integral tank head protection and will be retrofit converting their cars to DOT specifications 112J and 114J.

#### RELATIVE DIFFICULTY OF RETROFIT TASKS

As described above, specification 112 and 114 tank cars used in various services will be subject to the application of various retrofit "packages." All 112 and 114 cars are required to be equipped with shelf couplers, and that task is not integrally related to any other part of the process—either with regard to car availability or the mechanical steps involved. Therefore, both the existing retrofit program and

the program proposed by this Notice treat the application of shelf couplers as a matter separate from the application of tank head protection and thermal protection.

The head protection and thermal protection tasks present a more complicated problem. The rationale of the existing schedule contemplated that these two elements of the retrofit would likely be accomplished in most cases as a single process so as to hold down costs and out-of-service time and minimize unfavorable impacts on the transportation of essential products.

In the case of the jacketed retrofit, which will evidently be used for the vast majority of cars requiring both protective devices, existing techniques of application will continue to mandate a unified retrofit process. However, the "spray-on" thermal protection method in combination with a "head shield," which is expected to be employed for roughly 4,000 cars, is capable of separation into two retrofit stages.

The NTSB and others have identified shelf couplers and head protection as those measures requiring most urgent attention. Shelf couplers, as discussed below, should not present a major problem based on recently developed information.

Representatives of the major tank car companies, in testimony before the FRA special safety inquiry, made statements supporting the conclusion that the complete retrofit program could probably be accomplished in a three-year period by utilizing extra shifts and withdrawing additional cars from service at any given time. However, these witnesses warned that a significant reduction of allowed time below three years could upset plans already established for the orderly accomplishment of the retrofit and could actually delay the final overall completion of the retrofit tasks.

The FRA and the Bureau have attempted to evaluate what reductions might be possible in the time allowed to complete the application of tank head protection. In doing so, it has been necessary to consider two factors as they apply to each of the retrofit packages ("S," "T," "J").

The first factor is car availability. That is, given a proposed regulatory deadline, how many cars would be removed from service at any given time? Can these cars be made available for retrofit in an orderly manner?

The second factor is capacity. That is, do the affected parties have reasonable access to the necessary plant, equipment, skilled labor and any other components necessary to do the job?

In addition to the two factors bearing on feasibility, the effect of various proposed deadlines on retrofit elections has been considered. Most particularly, the FRA and the Bureau

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have given some weight to the superior protective qualities of the jacketed retrofit package. Any new regulatory deadlines which might require the immediate application of head protection would have the likely effect of discouraging the use of the jacketed retrofit, since the unitary process requires more shop time and can be accomplished at fewer facilities.

Thus, the proposed schedule outlined below emphasizes the completion of retrofit tasks which are more easily accomplished with less out-of-service time at a greater number of potential facilities. Although it is proposed to accelerate the timetable for the unitary jacketed retrofit, an effort has been made to leave undisturbed the elections which have already been made concerning the use of that approach.

## PROPOSED SCHEDULE

## SHELF COUPLER APPLICATION

Based upon information gathered from coupler manufacturers, tank car owners and tank car shippers, it appears that shelf couplers can be applied to all 112 and 114 tank cars not later than December 31, 1978. An adequate supply of these couplers is or soon will be available, and application is not difficult. Such application can be performed at any location having a light duty crane. Railroad repair facilities ("rip tracks") on major tank car shipping routes are able to assist in applying these couplers. Accordingly, it is proposed to amend section 173.31(a)(5) to require retrofit installation of shelf couplers not later than December 31, 1978. Since the proposed accelerated coupler retrofit schedule would not result in additional "shopping," or significant "out-of-service" time, this change in schedule should not result in any appreciable change in retrofit cost.

## NON-JACKETED THERMAL PROTECTION WITH SEPARATE TANK HEAD PROTECTION (SPECIFICATIONS 112T AND 114T)

As stated, it appears that approximately 4,000 specification 112 and 114 tank cars will be equipped with non-jacketed, "spray-on" thermal protection and separate tank head protection ("T" retrofit package). These cars when retrofitted will be specification 112T and 114T tank cars. Due to the urgency of placing tank head protection on these cars at the earliest possible time, it is proposed to amend section 179-105-3(d) to require that:

1. All tank head protection (head shields) be applied not later than December 31, 1979; and
2. Thermal, "spray-on" coating be applied not later than December 31, 1980.

Since this change in schedule could result in as many as 50 percent of

these tank cars (e.g., the tank cars originally scheduled for retrofit in 1980 and 1981) having to be out-of-service twice (once for "head shield" application and once for thermal protection application) additional retrofit costs could occur. It was indicated at the FRA special safety inquiry that each such retrofit application could remove the car from service for up to 45 days. Since these non-retrofitted tank cars have an average monthly rental of \$300, the overall maximum additional cost would be \$900,000 (e.g., 2,000 tank cars  $\times$  \$300/mo.  $\times$  1½ mo.). As noted below, 45 days is a relatively high estimate.

Although some participants in the FRA special safety inquiry suggested that "head shields" could be applied by not later than the end of 1978, the Bureau believes that such a drastic compression is not feasible.

Considerable concern exists among some parties as to the methods of retrofitting head shields to the tank cars. Several persons have questioned whether the "trapezoidal" head shield can be adequately attached to the tank car draft sill. Nine specification 112 tank cars were equipped with trapezoidal type head shields and fatigue tested at the Transportation Test Center at Pueblo, Colo. As of March 24, 1978, these head shields had been subjected to an average of 248 coupling impacts (ranging in speed from 4 to 10 miles per hour) and approximately 100,000 miles of over the road service. No fatigue problems were detected. Also, another type of head shield consisting of a half tank car head was installed on each end of one tank car. As of the same date, these two head shields were subjected to 248 coupling impacts and approximately 78,000 miles of over the road service. Again, no fatigue problems were detected. This testing indicates that no fatigue problems should occur when the head shield is attached to the tank car using proper welding techniques and a sound attachment design.

However, the welded attachment of all of these head shields to the tank cars was performed under controlled conditions. Most shield designers and manufacturers indicated that this welding operation was the critical factor and needed to be performed by highly skilled welders under controlled conditions in enclosed shops in order to avoid a risk of failure during train operations and consequent serious derailment. Since this retrofit application can result in a significant out-of-service period, the reduction in the supply of tank cars which would result from compressing this schedule to any greater degree could cause severe economic difficulty.

## TANK-HEAD PROTECTION WITHOUT THERMAL PROTECTION (SPECIFICATIONS 112S AND 114S)

It appears that approximately 3,400 specification 112 and 114 tank cars will be dedicated to the transportation of anhydrous ammonia. These cars, which are required to be equipped with tank head protection ("head shields") ("S" retrofit package), will when retrofitted be specification 112S and 114S tank cars. Again, due to the urgency of placing tank head protection on these cars at the earliest possible time, it is proposed to amend section 179-105-3(d) to require that this tank head protection be applied not later than December 31, 1979.

It appears that such a change in schedule will not result in any appreciable increase in retrofit costs.

As was indicated in the discussion of the application of head shields to tank cars being retrofitted to the 112T and 114T specifications, suggestions have been made that head shield application be completed by the end of 1978. These tank cars are used exclusively to store and transport anhydrous ammonia. Due to the prolonged cold weather, most of these cars will not be available for retrofitting until early July and will be needed to store manufactured anhydrous ammonia beginning in early September. Any significant out-of-service disruption could result in a severe fertilizer shortage in the spring of 1979. For this reason, it appears that a second year (1979) will be required to perform this retrofit if significant disruption is to be avoided.

## JACKETED INSULATION WITH INTEGRAL TANK HEAD PROTECTION (SPECIFICATIONS 112J AND 114J)

Of the roughly 20,400 specification 112 and 114 tank cars subject to the retrofit requirements of HM-144, approximately 12,500 are planned to be retrofitted with a jacketed insulation system incorporating integral tank head protection ("J" retrofit package). These cars when retrofitted will be specification 112J and 114J tank cars. Several major tank car builders have indicated that these cars could be completely retrofitted not later than December 31, 1980 and our analysis supports this conclusion. Accordingly, it is proposed to amend section 179-105-3(d) to require this retrofit operation to be performed so that:

1. Twenty-five percent of these tank cars owned by each tank cars owner be retrofitted not later than December 31, 1978;
2. An additional 40 percent of these tank cars owned by each tank car owner be retrofitted not later than December 31, 1979; and
3. An additional 35 percent of these tank cars owned by each tank car owner be retrofitted not later than December 31, 1980.

Likewise, based upon statements made at the FRA safety inquiry as well as other information received, it is believed that this proposed acceleration of the retrofit schedule should not result in any appreciable increase in retrofit costs.

Consideration has been given to requiring either total completion of this type of retrofit at an earlier date or increasing the percentage of tank cars required to be retrofitted during 1978 and 1979. Since this type of retrofit requires considerable ability in metals-forming and insulation application, only a few tank car repair shops have the existing capacity to perform this work. Construction of additional plant capacity would consume considerable time, while use of new car construction shops could cause severe tank car shortages and cause economic problems for many petroleum and chemical shippers and users. More importantly, any additional compression could cause critical out-of-service problems during the heating and fertilizing seasons, resulting in insufficient fuel during the winter and insufficient fertilizer in the spring. For this reason, as well as considering shop facility capacity, it appears that this retrofit schedule would cause the least overall economic disruption while achieving a more rapid implementation of the safety standards.

#### AVAILABILITY OF CARS DURING THE RETROFIT PERIOD

Without question the most serious constraint facing the FRA and the Bureau in the development of a compressed timetable has been the availability of pressure tank cars to perform essential transportation services. Witnesses at the FRA special safety inquiry indicated that the pressure tank car fleet is fully utilized during much of the year either to carry or to store fuels, fertilizer and industrial chemicals. This testimony is consistent with other information available to the Department of Transportation. Therefore, the FRA and the Bureau have attempted to fashion the proposed new retrofit schedule in a way which is intended to minimize disruptions in service. However, it is recognized that the compression of the program into a shorter time period may result in localized shortages of essential products. Comment is specifically solicited, therefore, on the following analysis of out-of-service time and the consequences of that analyses for users of the products transported and stored in 112 and 114 tank cars.

Application of a shelf coupler is a relatively simple operation requiring not more than a total elapsed time of one-hour per tank car using a two or three man crew and a light duty crane. The difficulty arises in having the appropriate pair of shelf couplers at the

proper location so as to be ready for application to a specific tank car. However, this is a problem which is solvable through proper planning. In terms of total out-of-service time, coupler retrofit can cause a tank car to be "out-of-service" for a time period of up to one day. This one-day time period is caused by switching the tank car to and later from a "repair" or "work" track. Since many 112 and 114 tank cars will have to be moved to repair tracks for other purposes prior to the end of the year, this impact should not be significant. Through the exercise of proper initiative, couplers may also be applied at major shipping points without any out-of-service time attributable to the application of the couplers.

Application of "head shields," "spray-on" thermal protection and jacketed insulation systems require the tank car to be shipped to a repair facility. Shippers, car owners and tank car lessors agreed that a time period of from twelve to fifteen days is required to move a tank car from an unloading point to a repair shop and that a like period of time is required to move a tank car from a repair shop to a loading point. Estimates of the time required to perform the retrofit operations and related maintenance ranged from twelve to thirty days. This includes provision for preinstallation operations. An average period of fifteen days appears to be realistic. Thus, to total out-of-service time estimate range from 36 to 60 days. An average out-of-service time of 45 days is used in the following analyses. However, some time credit must be assigned to the fact that during this 45-day period the empty tank car has moved from the consignee's unloading facility to the shipper's loading facility. A ten-day time period would be the minimum average time required for this empty movement were not retrofit or maintenance shopping involved. Accordingly, the net retrofit out-of-service time chargeable to this program has been determined at 35 days (five weeks) for each shop cycle.

In order to determine the effect of out-of-service time, it is assumed that the major retrofit program will begin about July 1, 1978. Thus, there will be approximately five 5-week cycles in 1978, 10 such cycles in 1979 and 10 additional such cycles in 1980. Allowance for plant vacations and possible holiday interruption is taken into account by using a fifty, rather than a fifty-two week year.

The effect of this five-week retrofit cycle on approximately 2,000 vinyl chloride tank cars being converted to specifications 112T and 114T can be analyzed.

1. Under the existing retrofit schedule, fifty-percent (1,000) of these tank cars were to be retrofitted with

"spray-on" thermal insulation and "head shields" not later than December 31, 1979.

2. Under the proposed accelerated retrofit schedule all 2,000 of these tank cars would have to be retrofitted with "head shields" by that date.

3. Therefore, at least 1,000 vinyl chloride monomer tank cars already have been scheduled for total retrofit not later than December 31, 1979; and thus, not more than 1,000 such tank cars will require two shoppings, one shopping between the present date and the end of 1979 for application of "head shields," and one shopping during 1980 for the application of "spray-on" thermal protection. By careful planning, some owners should be able to complete additional cars in a single shopping.

4. 2,000 tank cars will be out-of-service for a five-week retrofit cycle between the present date and December 31, 1979, with fifteen such cycles. This means that an average of 133 (2,000 tank cars divided by fifteen cycles) will be out-of-service at any one time due to retrofit applications being performed during the time period of July 1, 1978, through December 31, 1979.

5. A maximum of 1,000 tank cars will require retrofit installation of "spray-on" thermal protection during 1980. This means that an average of 100 (1,000 tank cars divided by ten cycles) will be out-of-service at any one time due to the retrofit applications being performed during 1980.

In the same manner, the effect of this five-week retrofit cycle on the approximately 2,000 specification 112 and 114 tank cars transporting liquefied flammable gases which are being converted to specifications 112T and 114T can be analyzed as follows:

An average of 133 tank cars will be out-of-service at any one time during the time period of July 1, 1978, through December 31, 1979; and an average of 100 tank cars will be out-of-service at any one time during 1980.

Likewise, the effect of this five-week retrofit cycle on the approximately 3,400 dedicated anhydrous ammonia tank cars being converted to specifications 112S and 114S can be analyzed.

1. Approximately 700 of these tank cars have been converted or built to specifications 112S and 114S.

2. Approximately 2,700 of these tank cars must have "head shields" retrofit installed by December 31, 1979.

3. With fifteen such cycles, this means that an average of 180 of these tank cars will be out-of-service during any one cycle for the time period of July 1, 1978, through December 31, 1979.

The proposed accelerated retrofit schedule would require that the approximately 12,500 specification 112 and 114 tank cars being converted to specifications 112J and 114J be retro-

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fitted according to the following schedule: 25 percent in 1978; and additional 40 percent in 1979; and an additional 35 percent 1980.

Thus, during the time period of July 1, 1978, through December 31, 1978, there would be five, five-week retrofit cycles. Approximately 3,125 (25 percent of 12,500) tank cars would require retrofit shopping during this time period. Approximately 625 (3,125 tank cars divided by 5 cycles) such tank cars would be out-of-service at any one time during July 1, 1978, through December 31, 1978.

During 1979, approximately 5,000 (40 percent of 12,500) of these tank cars would require retrofit shopping. Approximately 500 (5,000 tank cars divided by 10 cycles) such tank cars would be out-of-service at any one time during the year.

During 1980, approximately 4,375 (35 percent of 12,500) of these tank cars would require retrofit shopping. Approximately 438 (4,375 tank cars divided by 10 cycles) such tank cars would be out-of-service at any one time during the year.

In summary, this analysis shows that under the requirements of the proposed retrofit schedule an average of 848 tank cars (4.2 percent) will be out-of-service at any one time between July 1, 1978, and December 31, 1980. Average units out-of-service for individual years are (a) 1,071 tank cars during 1978, (b) 946 tank cars during 1979, and (c) 638 tank cars during 1980. Greater impacts may be experienced within individual categories of service. These numbers represent an overall lower percentage than that estimated by the tank car companies. Since the analysis assumes an even flow of cars through the shops the number of cars actually withdrawn from service at any given time may be higher or lower.

Since most of the tank car builders indicated that retrofit operations will be performed at facilities other than their principal new car fabrication facilities, and since current production of tank cars of all types is considerably less than total capacity, additional new pressure tank car construction could ease shortages occurring during the retrofit period.

## CANADIAN 112 AND 114 TANK CARS

Approximately 2,000 specification 112 and 114 tank cars have been constructed to specifications promulgated by the Canadian Transport Commission (CTC) and are used principally in Canada. However, approximately 80 percent of these CTC specification 112 and 114 tank cars transport hazardous commodities on the United States railroad network at some time. Accordingly, it is proposed to amend § 179.105-1(c) to require shelf couplers on all such CTC tank cars transporting haz-

ardous materials in the United States not later than December 31, 1978, and require total retrofit not later than December 31, 1980.

## COMPLIANCE

In order to assist in monitoring compliance with the HM-144 retrofit schedule, a separate Notice of Proposed Rulemaking is being developed. This Notice will propose requirements for car owner reporting of retrofit plans and accomplishments.

## ECONOMIC IMPACT

In analyzing the effect of accelerating the retrofit schedule as proposed in this Notice of Proposed Rulemaking, the FRA and the Bureau have attempted to identify additional costs resulting from compression of the schedule. A specific possible increased cost of \$900,000 has been identified for non-jacketed thermal protection and separate tank head protection application. Other additional costs are not now identifiable in definitive terms. However, the Bureau recognizes that compliance with the compressed retrofit schedule proposed in this Notice will result in some additional costs such as overtime payments, second and third shift differential payments, and possible premium payments for components. Also there may be additional transportation costs associated with "double shopping" of a small number of DOT specification 112T and 114T tank cars, as well as some additional labor cost. It is the belief of the Bureau that such additional costs will be only a small percentage of the cost of the initial rule and that the benefits to public safety and industry of accelerating the retrofit of these safety features will far outweigh any additional cost. Commenters are requested to submit cost information pertinent to this proposal.

Primary drafters of this document are William F. Black and Rolf Mowatt-Larssen, Office of Safety, and Edward F. Conway, Jr., Office of the Chief Counsel, Federal Railroad Administration, and George W. Tenley, Jr., Office of the Chief Counsel, Research and Special Programs Administration.

In consideration of the foregoing, it is proposed to amend Parts 173 and 179 of Title 49, Code of Federal Regulations as follows:

1. In § 173.31 paragraph (a)(5) would be revised to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

(a) . . .

(5) After December 31, 1978, each specification 112 and 114 tankcar built before January 1, 1978, must be equipped with shelf couplers in accordance with § 179.105-6 of this subchapter.

2. In § 173.314 paragraph (c) Table Note 23 and Note 24 would be revised to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

(c) . . .

NOTE 23.—After December 31, 1980, each specification 112 and 114 tankcar built before January 1, 1978, used for the transportation of flammable compressed gases must be equipped with thermal protection and tank head puncture resistance systems in accordance with § 179.105 of this subchapter.

NOTE 24.—After December 31, 1979, each specification 112 and 114 tankcar built before January 1, 1978, used for the transportation of anhydrous ammonia must be equipped with a tank head puncture resistance system in accordance with § 179.105 of this subchapter.

3. In § 179.105 paragraph (c) in § 179.105-1 would be revised; paragraphs (a) and (d) in § 179.105-3 would be revised to read as follows:

§ 179.105 Special requirements of specifications tankcars.

§ 179.105-1 General.

(c) Notwithstanding the provisions of § 173.8 of this subchapter, no 112 and 114 tankcar manufactured to specifications promulgated by the Canadian Transport Commission may be used:

(1) After December 31, 1978, to transport hazardous materials in the United States unless it is equipped with a coupler vertical restraint system under § 179.105-8; nor

(2) After December 31, 1980, to transport compressed gases in the United States unless it is equipped with thermal protection under § 179.105-4 and tank head puncture resistance under § 179.105-5.

§ 179.105-3 Previously built cars.

(a) After December 31, 1978, each specification 112 and 114 tank car built before January 1, 1978, shall be equipped with a coupler restraint system that meets the requirements of § 179.105-6.

(d) Each tank car owner shall equip its tank cars which are subject to paragraphs (b) and (c) of this section in accordance with the following schedule:

(1) Each tank car which is being retrofitted in accordance with paragraph (b) shall be retrofitted not later than December 31, 1979.



(2) Each tank car which is being retrofitted in accordance with paragraph (c) with a non-jacketed thermal protective system and a separate tank head puncture resistance system (112T/114T) shall be retrofitted:

- (i) With the tank head puncture resistance system not later than December 31, 1979; and
  - (ii) With thermal protection not later than December 31, 1980.
- (3) All tank cars being retrofitted in accordance with paragraph (c) with a thermal protective system enclosed in a metal jacket (112J/114J) shall be retrofitted such that—
- (i) At least 25 percent of those cars owned on December 31, 1978, are so equipped by not later than that date;
  - (ii) At least 65 percent of those cars owned on December 31, 1979, are so equipped by not later than that date; and
  - (iii) All of those cars owned on December 31, 1980, are so equipped by not later than that date.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e))

**NOTE.**—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring the preparation of an economic impact statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107 nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A draft evaluation of the estimated cost and anticipated benefits of this proposed amendment has been prepared in accordance with departmental policies and procedures for simplification, analysis and review of regulations (43 FR 9582) and has been placed in the public docket for this proceeding.

Issued in Washington, D.C., on May 4, 1978.

ALAN I. ROBERTS,  
Director, Office of  
Hazardous Materials Operations.

[FR Doc. 78-12639 Filed 5-10-78; 8:45 am]

[3510-22]

# DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric  
Administration

[50 CFR Part 258]

## FISHERMEN'S PROTECTIVE ACT PROCEDURES

Compensation for Damage Caused by Foreign  
Vessels in the Fishery Conservation Zone

AGENCY: National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

ACTION: Proposed rulemaking.

**SUMMARY:** The National Marine Fisheries Service proposes regulations to govern section 10 ("section 10") of the Fishermen's Protective Act of 1967, as amended (the "Act"). Section

10, recently enacted, provides a program to compensate domestic fishermen who have suffered vessel or gear damage, loss or destruction as the result of foreign vessel operations in the U.S. Fishery Conservation Zone, and beyond, in appropriate instances.

**DATE:** Comments must be received no later than June 12, 1978.

**ADDRESS:** Financial Assistance Division, National Marine Fisheries Service, Washington, D.C. 20235.

**FOR FURTHER INFORMATION CONTACT:**

Michael L. Grable, Chief, Financial Assistance Division, National Marine Fisheries Service, Washington, D.C. 20235. Telephone 202-634-7496.

**SUPPLEMENTARY INFORMATION:** On November 18, 1977, the Act was amended by adding a new section 10 (Pub. L. 95-194). Section 10 authorizes the establishment of a loan program for domestic fishermen who have had their fishing vessels or gear damaged, lost, or destroyed as the result of foreign vessel operations off the coast of the United States. The program will apply to incidents occurring in the geographical area defined in these regulations on the "fishermen's protective zone," and consisting of the fishery conservation zone (FCZ) established by the Fishery Conservation and Management Act of 1976 and an area beyond the FCZ in appropriate instances.

This notice proposes procedures and standards for the loan program authorized by section 10. Rules governing the Act currently appear at 50 CFR 258.1 through 258.9. Under this proposal 50 CFR would be amended to include regulations governing section 10 by adding a new heading "Subpart A" for the Act's existing regulations (sections 258.1 through 258.9) and adding a new "Subpart B" to implement section 10.

Section 10 authorizes the Secretary of Commerce (the "Secretary") to make low-interest loans to eligible fishermen after making a determination that the eligibility and evidentiary criteria of section 10 relating to the lost, destroyed, or damaged property have been met. After making the loan the Secretary is directed to investigate the circumstances of the incident resulting in the compensated loss, damage, or destruction and determine whether the loan will continue according to its original terms, be canceled or be repaid over a shortened time period.

This proposed rulemaking governs: (1) Eligibility for the program; (2) evidence to be submitted with loan applications; (3) procedures for making loans; (4) guidelines for the determination of the amount of the loans; (5) procedures and standards by which the Secretary will determine whether to modify or cancel loans; and (6) loan

repayment and cancellation requirements.

One section governing the Government's disposition of rights assigned to it by loan recipients is being reserved for a proposal of rules to be made at a later time. The proposed rule follows:

Dated: May 5, 1978.

RICHARD A. FRANK,  
Administrator, National Oceanic  
and Atmospheric Administration.

Amend part 528 as follows:

1. Add a new heading "Subpart A—Seizures of U.S. Commercial Fishing Vessels" for §§ 258.1 through 258.9.
2. Add a new subpart B as follows:

Subpart B—Compensation for Damage Caused by Foreign Vessels in the Fishery Conservation Zone

- Sec.
- 258.20 Purpose.
- 258.21 Definitions.
- 258.22 Eligibility.
- 258.23 Applications.
- 258.24 Approval of loan applications.
- 258.25 Terms and conditions of loans.
- 258.26 Determination of amount of loss, damage, or destruction.
- 258.27 Determination of fault.
- 258.28 Loan repayment or cancellation.
- 258.29 Government collection. [Reserved]

**AUTHORITY:** Sec. 10, 91 Stat. 1413 (22 U.S.C.1980).

## Subpart B—Compensation for Damage Caused by Foreign Vessels in the Fishery Conservation Zone

### § 258.20. Purpose.

This subpart provides rules and procedures for the granting, repayment, and cancellation of loans to owners and operators of United States Commercial fishing vessels for the loss, damage, or destruction of their fishing vessels or gear caused by a vessel of a foreign nation operating in the U.S. Fishermen's Protective Zone.

### § 258.21. Definitions.

Unless the context otherwise requires, in this subpart:

(a) "Alternative claim" means any claim not made under this subpart which seeks compensation for the same loss, damage, or destruction of a fishing vessel or fishing gear as is covered by a loan application under § 258.23.

(b) "At fault" means negligent or willful, through action or inaction causing the loss, damage, or destruction involved.

(c) "Fishermen's protective zone" means: (1) The area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured, (2) all areas in which U.S. continental